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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAMES EDWARD HENDERSON,

Defendant and Appellant.

F041744

(Super. Ct. No. SC084539A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John I. Kelly, Judge.

Shama H. Mesiwala, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, and Harry Joseph Colombo, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant, James Edward Henderson, appeals from conviction of possession of cocaine for sale (Health & Saf. Code, § 11351.5), resisting arrest (Pen. Code, § 148) and

* Before Dibiaso, Acting P.J., Vartabedian, J., and Buckley, J.

certain enhancements. His sole contention on appeal is the failure of the trial court to give, sua sponte, a unanimity instruction on the resisting arrest charge. We will affirm.

FACTS

While on patrol in Bakersfield, Officer Wainwright observed defendant to be engaged in what he deemed to be suspicious activity relating to a drug transaction. When he approached defendant and the vehicle into which defendant was leaning, the vehicle drove off and defendant walked away. Officer Wainwright again approached defendant in a commercial parking lot; again defendant walked away. He then began to run, pursued by Wainwright in his vehicle. After several minutes of evasive action, defendant began to tire. Wainwright left his vehicle and began foot pursuit.

Finally, as Wainwright testified, “I am able to catch up to him. When I do, I tackle him to the ground from behind and tell him to put his hands behind his back. However, he refuses to do so and a struggle ensues where he tries to -- to evade me and get away from me. I apply a control hold and am able to take him into custody. [¶] Q. Okay. And did you handcuff him at that point? [¶] Yes, sir.”

DISCUSSION

Defendant contends that the court erred by failing to instruct sua sponte that the jury must all agree on the same act (either running from the officer or resisting being handcuffed). It is defendant’s argument that these are discrete acts compelling such an instruction. We disagree.

“The unanimity instruction is not required when the acts are so closely connected in time as to form part of one transaction. [Citations.] This branch of the ‘continuous conduct’ exception (*People v. Diedrich* [(1982) 31 Cal.3d 263,] 281-282) applies if the defendant tenders the same defense or defenses to each act and if there is no reasonable basis for the jury to distinguish between them.” (*People v. Crandell* (1988) 46 Cal.3d 833, 875.)

Defendant neither testified nor proffered any evidence other than how the officer described the apprehension, one continuous pursuit culminating in an arrest.

DISPOSITION

The judgment is affirmed.